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Inc. (formerly known as D3 Inc.) and
D3Publisher of America, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

1st Playable Productions LLC, a New York
corporation,

Plaintiff,

v.

D3 Inc., a Japanese corporation, D3 Publisher
of America, Inc., a Delaware corporation, and
DOES 1-3, inclusive,

Defendants.

Case No. CV 14-1315 JFW (JCGx)

**STIPULATED
PROTECTIVE ORDER**

[DISCOVERY MATTER]

**U.S. Magistrate Judge
Jay C. Gandhi**

1 WHEREAS, plaintiff 1st Playable Productions, LLC and defendants
2 D3Publisher Inc. ("D3P") (which was formerly known as D3 Inc.) and D3Publisher of
3 America, Inc. ("D3PA") (collectively the "Parties") believe that good cause exists for
4 entry of this Stipulated Protective Order (the "Order"); and

5 WHEREAS, because the present action (the "Action") is essentially one for an
6 accounting of royalties under four separate contracts for four separate videogames and
7 involves highly confidential non-public business financial records concerning these
8 videogames, and will require the production of documents and information considered
9 by the parties, and third party witnesses, to be trade secrets, or other confidential,
10 proprietary or sensitive financial information, the public disclosure of which could be
11 competitively harmful or impinging on any persons' personal privacy rights; and

12 WHEREAS, an agreement regarding limitations on the disclosure and use of
13 such confidential documents and information is desirable for the orderly conduct of
14 discovery in the Action, while at the same time providing protection from the misuse
15 of confidential documents and information;

16 WHEREAS, the parties have, through counsel, stipulated to entry of this Order
17 pursuant to Fed. R. Civ. P. 26(c) to prevent unnecessary disclosure or dissemination of
18 CONFIDENTIAL INFORMATION, as defined herein, and wish to comply with Local
19 Rule 79-5, which governs the procedure for filing documents under seal;

20 IT IS HEREBY STIPULATED by and between the parties, by and through their
21 respective counsel of record, that the Court enter an Order to protect confidential
22 materials and information produced and/or filed by the parties, or any third-party
23 witness or other entities, including, but not limited to, records, information,
24 documents, and/or computer files, during the course of the Action as follows:

1 1. PROTECTED INFORMATION.

2 a. “CONFIDENTIAL INFORMATION” shall mean information and
3 tangible things that the designating person or entity reasonably and in good faith
4 believes contain: (a) non-public proprietary information of one of the parties, their
5 affiliates, or any third party; (b) non-public financial information (including without
6 limitation contracts, statements, spreadsheets, budgets, books, ledgers, and
7 accountings); (c) non-public information concerning the ownership or control of the
8 parties or any third party; (d) non-public business plans, projections and information;
9 (e) non-public information of a personal or intimate nature regarding any individual;
10 (f) trade secrets as that term is defined in the California Civil Code Section 3426.1; (g)
11 any confidential business information that could, if disclosed to the public, cause harm
12 to any of the parties’, or a third party’s, competitive position; and (h) any other
13 category of non-public information that is recognized to have confidential status by
14 mutual agreement of the parties and/or by order of this Court.

15 b. CONFIDENTIAL INFORMATION may be contained in (a) discovery
16 information or other materials produced or obtained in this Action by or through any
17 means; (b) documents of every kind or description; (c) taped, electronically stored,
18 videotaped, recorded, filmed or computer records of every kind or description; (d)
19 responses to written discovery requests, including responses to interrogatories and
20 requests for admission; (e) physical objects, samples or other tangible items; (f) oral
21 testimony at depositions, in Court, or otherwise; and (g) copies, notes, summaries or
22 other records of the foregoing, including legal briefs and pleadings. All summaries,
23 reviews, copies, recordings, abstracts, excerpts, analyses or other writings, including
24 legal memoranda, that contain, reveal or otherwise disclose such CONFIDENTIAL
25 INFORMATION shall also be deemed to contain CONFIDENTIAL INFORMATION.

26 2. USE SOLELY FOR THIS LITIGATION. All CONFIDENTIAL
27 INFORMATION shall be used for purposes of the Action only and shall not be
28 disclosed except in accordance with the provisions of this Order.

1 3. DESIGNATION OF CONFIDENTIAL DOCUMENTS AND
2 INFORMATION. The parties and third parties that avail themselves of this Order in
3 accordance with Paragraph 11, *infra*, shall designate documents and other materials
4 containing CONFIDENTIAL INFORMATION in the following manner:

5 a. Documents and information produced in discovery that contain
6 CONFIDENTIAL INFORMATION shall be designated as such by stamping the word
7 "CONFIDENTIAL" on the margin of each page of such documents, or using another
8 reasonable method agreed to in writing by the parties. Such labels will be reasonably
9 placed so it is obvious upon sight, but no marks on the documents may sever or
10 obscure any of the actual materials being produced.

11 b. The parties, or a third party, may designate the deposition testimony and
12 exhibits (or portions thereof) of any witness in this litigation as "CONFIDENTIAL"
13 on the record at the time of the deposition by advising the reporter and all parties of
14 such fact during the deposition. If any portion of a videotaped deposition is designated
15 pursuant to this Paragraph, the videocassette, videotape, CD, or DVD container shall
16 be labeled with the appropriate legend. In addition, within thirty (30) days of receipt
17 of a transcript, the deponent, his/her counsel, or any other party may designate or re-
18 designate all or portions of the transcript "CONFIDENTIAL." The deponent, his/her
19 counsel or any other party shall list on a separate piece of paper the numbers of the
20 pages and lines of the deposition transcript containing "CONFIDENTIAL"
21 information and serve the same on opposing counsel. Pending such designation, the
22 entire deposition transcript, including exhibits, shall be deemed "CONFIDENTIAL"
23 information. If no designation is made within thirty (30) days after receipt of the
24 transcript, the transcript shall be considered not to contain any "CONFIDENTIAL"
25 information.

26 c. CONFIDENTIAL INFORMATION contained in any affidavit, brief,
27 memorandum or other papers filed with the Court herein, as specified in Paragraph 9,
28 *infra*, shall be filed only in accord with the provisions of Local Rule 79-5.

1 4. DISCLOSURE OF DESIGNATED MATERIAL. Material designated
 2 CONFIDENTIAL INFORMATION and any summary, brief, description or report
 3 containing such information designated as CONFIDENTIAL INFORMATION, may
 4 be disclosed only to the following persons, without leave of this Court:

5 a. the Court, persons employed by the Court, and stenographers and
 6 videographers who are transcribing or recording the testimony or argument at a
 7 hearing, trial or deposition in this Action or any appeal therefrom;

8 b. independent consultants and experts who are not current employees of
 9 any party in this matter and who have been retained by counsel to provide assistance in
 10 this Action, with disclosure only to the extent necessary to perform such work;

11 c. witnesses and deponents in this Action who are shown the
 12 CONFIDENTIAL INFORMATION while testifying or in preparation for testifying;

13 d. graphics or design services personnel retained by counsel for purposes of
 14 preparing demonstrative or other exhibits for depositions, trials, or other court
 15 pleadings in this Action;

16 e. non-technical jury or trial consulting services retained by counsel;

17 f. document imaging and database services personnel retained by counsel,
 18 and consultants retained by counsel to set up, maintain and/or operate computer
 19 systems or, litigation databases, or to convert data for inclusion in such databases;

20 g. the parties' outside counsel of record in this Action and any other counsel
 21 for a party that appears in this Action, and photocopy services personnel retained by
 22 counsel, their paralegal assistants, law clerks, stenographic and clerical employees who
 23 are assisting in the prosecution, defense and/or appeal of this Action.

24 h. individuals selected by the parties to function as mediators or arbitrators;

25 i. in-house counsel for the parties;

26 j. a party, including in the case of corporate parties, their directors and
 27 officers, and employees designated to assist counsel in this Action; and

28 k. authors or recipients of the CONFIDENTIAL INFORMATION.

1 5. NON-DISCLOSURE AGREEMENT. No CONFIDENTIAL
 2 INFORMATION shall be revealed or disclosed, in whole or in part, directly or
 3 indirectly, to any individual described in subparagraphs 4(b) or (e), *supra*, until that
 4 individual has been given a copy of this Order and has duly completed and signed an
 5 undertaking in the form attached hereto as Exhibit A. The original of each undertaking
 6 shall be retained until the conclusion of this Action, including all appeals, by counsel
 7 for each party who intends to or does disclose to such individual any
 8 CONFIDENTIAL INFORMATION.

9 6. CHALLENGE TO DESIGNATION. If a party disagrees with the
 10 designation of any information as CONFIDENTIAL INFORMATION or the failure of
 11 a party to designate any information as CONFIDENTIAL INFORMATION, such
 12 party shall first make its objection known to the producing party in writing, explaining
 13 how the designation (or failure to designate) is improper, and request a change of
 14 designation. If the parties are unable to resolve their differences, then the parties shall
 15 be governed by Local Rules 37-1 and 37-2 in filing a motion for a determination as to
 16 whether the document(s) require protection. The burden of proving that information
 17 has been or should be properly designated as CONFIDENTIAL INFORMATION is on
 18 the party seeking such designation. All documents initially designated as
 19 CONFIDENTIAL INFORMATION shall continue to be subject to this Order unless
 20 and until the Court rules otherwise. Any failure by the non-designating party to object
 21 to any material being designated as CONFIDENTIAL INFORMATION shall not be
 22 construed as an admission by any non-designating party that the material constitutes or
 23 contains CONFIDENTIAL INFORMATION.

24 7. DEPOSITIONS. A party may exclude from a deposition any person who
 25 is not entitled to have access to CONFIDENTIAL INFORMATION when such
 26 information is the subject of examination.
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1 8. TREATMENT OF CONFIDENTIAL MATERIAL.

2 a. Any person in possession of CONFIDENTIAL INFORMATION shall
3 exercise due care with regard to the storage, custody or use of such CONFIDENTIAL
4 INFORMATION to ensure that the confidential nature of the same is maintained in
5 conformity with this Order.

6 b. Any person receiving CONFIDENTIAL INFORMATION shall not
7 disclose such information to any person who is not entitled to receive such information
8 under this Order. If CONFIDENTIAL INFORMATION is disclosed to any person not
9 entitled to receive disclosure of such information under this Order, the person
10 responsible for the disclosure will inform counsel for the producing party and, without
11 prejudice to other rights and remedies of any party, make a reasonable good faith effort
12 to retrieve such material and to prevent further disclosure of it by the person who
13 received such information.

14 c. Nothing contained in this Order shall prevent a producing party from
15 using its own CONFIDENTIAL INFORMATION in any way it chooses.

16 9. FILING OF CONFIDENTIAL MATERIAL. Any motion, pleading or
17 other document containing CONFIDENTIAL INFORMATION that is filed with the
18 Court shall only be filed under seal pursuant to a further order of the Court pursuant to
19 Local Rule 79-5. The parties agree that they will comply with the provisions of Local
20 Rule 79-5 in all regards with respect to the filing and lodging of CONFIDENTIAL
21 INFORMATION with the Court.

22 10. INADVERTENT DISCLOSURE. The inadvertent production of any
23 CONFIDENTIAL INFORMATION, or otherwise protected or exempted information,
24 as well as the inadvertent production of information without an appropriate designation
25 of confidentiality, shall not be deemed a waiver or impairment of any claim of
26 privilege or protection, including but not limited to the attorney-client privilege, the
27 protection afforded to work-product materials or the subject matter thereof, or the
28 confidential nature of any such information, provided that the producing party shall

1 promptly provide notice to the receiving party in writing when inadvertent production
2 is discovered. Upon receiving written notice from the producing party that
3 CONFIDENTIAL INFORMATION, privileged information or work-product material
4 has been inadvertently produced, documents containing such information shall be
5 returned to counsel for the producing party and the receiving party shall not use such
6 information for any purpose except application to the Court. In response to an
7 application to the Court by the receiving party to compel production of such
8 documents and/or information, the producing party may submit the documents or
9 testimony at issue to the Court for *in camera* inspection.

10 11. THIRD PARTIES. Third parties who produce information in this Action
11 may avail themselves of the provisions of this Order and materials produced by any
12 such third parties shall be treated in conformance with this Order.

13 12. RESPONSE TO THIRD PARTY SUBPOENA. In the event that any
14 party (a) is subpoenaed in another action, (b) is served with a demand in another
15 Action to which it is a party, or (c) is served with any other legal process by a person
16 not a party to this litigation, and is requested to produce or otherwise disclose
17 discovery material that is designated as CONFIDENTIAL INFORMATION by
18 another party or third party that avails themselves of this Order, the party subpoenaed
19 or served in accordance with this paragraph shall object to production of the
20 CONFIDENTIAL INFORMATION and shall give prompt written notice to the
21 producing party. If the person seeking access to the CONFIDENTIAL
22 INFORMATION takes action against the party covered by this Order to enforce such a
23 subpoena, demand or other legal process, it shall respond by setting forth the existence
24 of this Order. Nothing in this Order shall be construed as precluding production of
25 CONFIDENTIAL INFORMATION covered by this Order in response to a lawful
26 court order.

27 13. USE OF DESIGNATED MATERIALS AS EVIDENCE AND AT
28 TRIAL. This Order shall not in any way afford to any party any objection to the

1 offering or admission of CONFIDENTIAL INFORMATION into evidence or use
2 otherwise by order of the Court. The parties agree to engage in good faith negotiations
3 concerning the appropriate procedures to protect CONFIDENTIAL INFORMATION
4 at trial, as the need arises. For purposes of all pretrial proceedings in the Action,
5 CONFIDENTIAL INFORMATION materials under this Order may only be filed
6 under seal in accordance with Paragraph 9, *supra*.

7 14. EFFECTIVE UPON EXECUTION. The parties agree that this Order
8 shall be binding as an agreement between the parties upon execution by the parties
9 before entry by the Court. The parties further agree that if for any reason this Order is
10 not accepted by the Court, they will promptly execute and submit a revised Order that
11 addresses the Court's concerns.

12 15. CONCLUSION OF ACTION. Within sixty (60) days after the
13 conclusion of this Action, including appeal, after entry of a final order in this Action,
14 or after the parties have executed a settlement agreement in this Action, all
15 CONFIDENTIAL INFORMATION shall be destroyed by all receiving parties or shall
16 be returned to the producing party, at the receiving party's election. Notwithstanding
17 the foregoing, counsel of record for each party may maintain in its files one copy of
18 each document filed with the Court containing CONFIDENTIAL INFORMATION,
19 and a copy of all depositions (and exhibits) and written discovery responses, and any
20 notes or memoranda relating thereto, as well as all work product. All such material
21 shall remain subject to the terms of this Order. This Order shall remain in full force
22 and effect until modified, superseded, or terminated by agreement of the parties or by
23 an order of the Court.

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1 16. COURT TO RETAIN JURISDICTION. This Order shall survive the
2 final disposition of this Action, and the Court shall retain continuing jurisdiction to
3 resolve any dispute arising under this Order.

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5 IT IS SO ORDERED.

6 DATED: 6-26, 2014

7 By: _____

8 Hon. Jay C. Gandhi
9 United States Magistrate Judge
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EXHIBIT A

**UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER
REGARDING CONFIDENTIALITY OF DOCUMENTS**

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Protective Order that was issued by
the United States District Court for the Central District of California in the case of *1st*
Playable Productions LLC v. D3, Inc. et al. – Case No. CV14-1315 JFW (JCGx). I
agree to comply with and to be bound by all the terms of this Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Protective
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____, 2014

City and State where sworn and signed: _____

Signed: _____
[Print Name] [Signature]